

**Internal Revenue Service
P.O. Box 2508, Room 7008
Cincinnati, OH 45201**

**Department of the Treasury
Exempt Organizations
Rulings and Agreements**

Release Number: **200926047**
Release Date: 6/26/09
Date: March 31, 2009

Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Numbers:

(phone)

(fax)

UIL# 4945.04-04

Legend

M = Foundation

N = School System

X = Fund

Z = County, State

Dear

We have considered your request for advance approval of your grant-making program under section 4945(g)(1) of the Internal Revenue Code, dated November 26, 2008.

Our records indicate that X was recognized as exempt from Federal income tax under section 501(c)(3) of the Code and that it is classified as a private foundation as defined in section 509(a).

Your letter indicates that X will operate a program to award Scholarships to worthy young men and women, to assist them with obtaining a high school, college or professional education without limitation regarding the students' earning capacity during their school career.

Each Scholarship awarded will constitute a scholarship or fellowship grant subject to the provisions of Section 117(a) and will be used to pay all or a part of a recipient's expenses incurred in attending an educational institution described in Section 170(b)(1)(A)(ii).

X may publicize the availability of the scholarships through direct and indirect contacts with the general public. The Scholarships may also be publicized through various charitable and educational organizations that work with and provide services to youth and other worthy individuals in and around Z. In particular, the Scholarships may be publicized through guidance counselors and other appropriate staff and faculty at high schools located in Z and through N. X may expand its publicity efforts as appropriate.

The approximate number of eligible recipients of all such Scholarship each year is 300-400. Initially, X anticipates that it will award approximately 15 Scholarships each year, but in the future that number may increase.

The selection of all Scholarship recipients will be on an objective and nondiscriminatory basis. No disqualified person with respect to X will be eligible for consideration. Donors to X will not be allowed to designate Scholarship recipients or other educational grantees. Scholarships will be made on the basis of merit to worthy students from Z, to enable them to procure a high school, college or professional education in the United States.

X will accept application for the Scholarships that include some or all of the following:

- A transcript of prior academic achievements.
- A report of performance on tests designed to measure ability and aptitude for academic work.
- A description of financial need.
- An essay written by the applicant describing the applicant's interest and aspirations.
- A description of past involvement in extracurricular activities.
- A list of academic honors and recognitions.
- Written recommendations by individuals not related to the applicant.
- The names of the educational institutions to which the applicant intends to apply.

When appropriate, Scholarship applicants will be interviewed by the group making the Selection Committee in person or by telephone.

The criteria used in selecting recipients from the group of applicants will be reasonably related to the purposes of the particular Scholarship. Criteria may include, but will not be limited to, prior academic performance; performance on tests designed to measure ability and aptitude for college work; recommendations from educators, social workers, and others not related to the potential recipient; financial need; and the conclusions that the Selection Committee might draw from personal interviews as to the applicant's motivations, character, ability, and potential. Factors that are not reasonably related to the purposes of the Scholarships, such as race and gender, will not be considered and will have no influence on the selection of recipients.

The Selection Committees for the Scholarships will consist of the Superintendent of N or his/her appointees or designees.

No member of a Selection Committee will be in a position to derive a private benefit, directly or indirectly, by the selection of one or more particular Scholarship recipients. Furthermore, spouses and dependents of members of a Selection Committee will be ineligible to receive a Scholarship.

The following terms and conditions will apply to the Scholarships awarded pursuant to the procedure described herein:

- (i) Each Scholarship will be awarded by the Selection Committee in an amount determined by it, not to exceed the anticipated cost of the recipient's tuition, board, room, fees, books, supplies, travel costs, and incidental expenses for attendance at the educational institution by the recipient. The institution must be described in Code section 170(b)(1)(A)(ii).

- (ii) Generally, each Scholarship will continue for the designated term of the Scholarship during the recipient's course of study at such institution, provided the recipient maintains satisfactory progress toward completion of his or her course of study and otherwise conforms to the terms and conditions of this procedure.
- (iii) In any event, each Scholarship will continue only so long as it constitutes a scholarship or fellowship grant described in Code section 117(a).
- (iv) The course of study for which Scholarships are available will not be limited in a manner that benefits directly any donor, employer, or X.
- (v) X will make Scholarship payments directly to the educational institution, in which instance X will secure the agreement of such institution (i) to use such payments for the recipient's expenses and (ii) to pay the excess (if any) to the recipient only if the recipient is enrolled at the institution and the recipient's standing at the institution is consistent with the purposes and conditions of the Scholarship. In certain other instances, X may make payments directly to the recipient, subject to the supervision and investigation requirements set forth herein.

X will retain written records pertaining to all Scholarships awarded under this procedure, including the following:

- (i) All information used to evaluate the qualifications of potential recipients.
- (ii) Identification of each recipient (including any relationship of the recipient to X sufficient to make the recipient a disqualified person of X within the meaning of Code section 4946(a)(1)).
- (iii) Specifications of the amount and purpose of each Scholarship.
- (iv) The reports and other follow-up information obtained under this procedure.

X will employ the following procedure to supervise, investigate, and review the Scholarships awarded under these procedures:

- (i) With respect to a Scholarship paid on behalf of a recipient to an educational institution in Code section 170(b)(1)(A)(ii), X proposes to supervise, investigate and review Scholarships by complying with the requirements of Treas. Reg. section 53.4945-4(c)(5). Each institution to which such Scholarships are paid will be required to agree to use the funds from a Scholarship to defray a recipient's expenses or to pay the funds (or a portion of them) to a recipient only if the recipient is enrolled at such institution and the recipient's standing at it is consistent with the purposes and condition of the Scholarship.
- (ii) With respect to a Scholarship paid directly for study at an education institution described in Code section 170(b)(1)(A)(ii), X will obtain reports, investigate any suspected diversion of funds from their proper purpose, and recover diverted funds as follows:

- (a) X will ensure that it receives at least once each year a report, verified by the educational institution attended by the recipient that sets forth the recipient's courses taken and grades received in each academic period. In the case of a recipient whose study at an educational institution does not involve the taking of courses but only the preparation of research papers or projects, such as the writing of a doctoral dissertation, X shall ensure that it receives at least once each year a brief report, approved by the faculty member supervising the recipient or by another appropriate university official, regarding the progress of the recipient's paper or project. Upon completion of the recipient's study at the educational institution, X also will obtain a final report describing the recipient's accomplishments with respect to the Scholarship and accounting for the funds received under such Scholarship from the recipient.
- (b) When the reports submitted under this paragraph, including the failure to submit such reports, indicate that all or part of the Scholarship is not being used in furtherance of the purposes of the Scholarship, the Selection Committee will investigate the matter immediately. While conducting an investigation of a recipient, X will withhold further payments until any delinquent reports required under this procedure have been submitted.
- (c) If X determines that any part of a Scholarship has been used for improper purposes and a recipient previously has not diverted funds, X will take all reasonable and appropriate steps either to recover the funds or to ensure the restoration of the diverted funds and the dedication of other Scholarship funds held by the recipient to the proper purposes. Furthermore, X will withhold any further payments to the recipient until it has received the recipient's written assurance that future diversions will not occur and has required the recipient to take extraordinary precautions to prevent future diversions from occurring.
- (d) In cases where a recipient previously has diverted funds received from X, and X determines that any part of a Scholarship again has been used for improper purposes, X will take all reasonable and appropriate steps to recover the funds or to ensure the restoration of the funds and the dedication of other Scholarship funds held by the recipient to their proper purposes. Moreover, X will withhold further payments until these conditions are met: (i) such funds are in fact so recovered or restored; (ii) X has received the recipient's written assurance that future diversions will not occur; and (iii) X requires the recipient to take extraordinary precautions to prevent future diversions from occurring.
- (e) As used in this paragraph, the phrase "all reasonable and appropriate steps" includes legal action where appropriate, but need not include legal action if such action would in all probability not result in the satisfaction of execution on a judgment.

Sections 4945(a) and (b) of the Code impose certain excise taxes on “taxable expenditures” made by a private foundation.

Section 4945(d)(3) of the Code provides that the term “taxable expenditure” means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) of the Code provides that section 4945(d)(3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if it is demonstrated that:

- (1) The grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii);
- (2) The grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or
- (3) The purpose of the grant is to achieve a specific objective, produce a report or similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Regulations provides that to secure approval, a private foundation must demonstrate that:

- (i) Its grant procedure includes an objective and nondiscriminatory selection process;
- (ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (iii) The foundation plans to obtain reports to determine whether the grantees performed activities that the grants are intended to finance.

Based on the information submitted and assuming your award programs will be conducted as proposed with a view to provide objectivity and nondiscrimination in making the awards, we have determined that your procedures for granting the awards comply with the requirements contained in section 4945(g) of the Code and that awards granted in accordance with such procedures will not constitute “taxable expenditures” within the meaning of section 4945(d)(3).

In addition, we have determined that awards made under your procedures are excludable from the gross income of the recipients subject to the limitations provided by section 117 of the Code.

This determination is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to foundation managers, or members of the selection committee, or for a purpose that is inconsistent with the purpose described in section 170(c)(2)(B) of the Code.

The approval of your award program procedures herein constitutes a one-time approval of your system standards and procedures designed to result in awards which meet the requirements of section 4945(g)(1) of the Code. This determination only covers the grant programs described above. Thus, approval shall apply to subsequent award programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and case histories so that any or all award distributions can be substantiated upon request by the Internal Revenue Service.

This determination is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as a precedent.

You must report any future changes in your grant making procedures. Please keep a copy of this letter in your permanent records.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosures
Notice 437
Redacted copy of letter